



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1996

Ms. Susan L. Wheeler
University Counsel
University of Houston
1600 Smith, Suite 3400
Houston, Texas 77204-2162

OR96-0272

Dear Ms. Wheeler:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38657.

The University of Houston (the "university") received an open records request for documents relating to a grievance and meetings held by the College of Architecture's grievance committee at the university. You indicate that the university has released most of the responsive documents, but that there are several letters and taped interviews that have not been disclosed. You assert that these letters and tapes are excepted from disclosure under section 552.103(a) of the Government Code. You also assert that some of the information at issue is confidential pursuant to the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and section 552.114 of the Government Code.

Although the request was received by the university on January 23, 1996, the university did not seek a decision from this office until February 5, 1996. Section 552.301 of the Government Code provides that:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under [chapter 552] must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the

exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply *within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.* [Emphasis added.]

Chapter 552 thus imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for information. Failure to abide by this provision results in the presumption that information is public. Gov't Code § 552.302.

The presumption that information is public when the ten day deadline is not met can only be overcome by a compelling demonstration that the information at issue should not be made public, such as when information is made confidential by other law. See Open Records Decision No. 150 (1977) (presumption of openness overcome by showing information was made confidential by other law or affects third party interests). As section 552.103(a) is a discretionary exception that can be waived by failure to timely seek a decision from this office, the records for which you assert section 552.103(a) are considered public and must be released. However, you may not release information if it is actually made confidential pursuant to FERPA and section 552.114.

This office has recently issued Open Records Decision No. 634 (1995), which concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

We believe that that Open Records Decision No. 634 (1995) is dispositive as to any records that are excepted from required public disclosure by FERPA or section 552.114 of the Government Code. We remind you, though, that Open Records Decision No. 634 (1995) applies only to "education records" under FERPA. "Education records" are records that

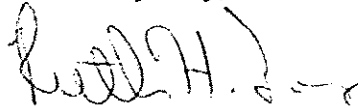
- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A); see also Open Records Decision Nos. 462 (1987), 447 (1986). Information must be withheld from required public disclosure under FERPA *only* to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). But see 20 U.S.C. §

1232g(a)(1)(A), (d) (parent or adult student has affirmative right of access to student's education records). *See also* Open Records Decision No. 431 (1985) (exceptions do not authorize withholding of "education records" from adult student).¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 38657

Enclosures: Open Records Decision No. 634

cc: Mr. Jeffrey G. May
40 Anderson St.
Boston, MA 02114
(w/enclosure - Open Records Decision No. 634)

¹If you have further questions as to the applicability of FERPA to the information at issue, you may consult with the United States Department of Education. *See* Open Records Decision No. 634 (1995) at 4 n.6, 8 n.9.